

**Ramana, Anand V.**

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**From:** Ramana, Anand V.  
**Sent:** Wednesday, August 29, 2012 10:34 PM  
**To:** 'Andrew Guzzo'; Leonard Bennett  
**Cc:** Kristi Cahoon Kelly; Susan Rotkis; Pumphrey, Brian E.; Fratkin, Bryan A.; Vicki Ward  
**Subject:** RE: Rocabruna v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION  
Andrew,

Thanks for your email. I'll answer Len's questions in turn:

1. We are not aware of any legal authority that requires BOA to produce non-management employees in the forum in which you brought the lawsuit. Indeed, we are not aware of any authority that requires BOA to produce non-management employees in its principal place of business. The Indian employees are not party or party representative witnesses, therefore you should issue a Rule 45 subpoena if you wish to depose them as fact witnesses. It is early in discovery so you have plenty of time to do that. We are assembling the names of the Indian operators that worked on the Rocabrunas' account and will get you those names as soon as we have finalized the information. We hope to get those to you in the next couple of days and well before our responses are due to your written discovery.

2. [REDACTED]

3. You are clearly required to provide us with facts that are relevant to your claim(s) for damages. That includes accurate figures of the actual damages your clients have purportedly suffered. That said, we will agree that, for now, we will not move to compel any damages figures beyond actual damages sought.

4. We will withdraw Interrogatory No. 28 and appreciate your recognition that an exchange of relevant information will be permitted if a fee petition is ever filed.

I am still keeping September 7 open for you. Please do the same for us.

Regards,

Anand

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**From:** Andrew Guzzo [mailto:aguzzo@siplfirm.com]  
**Sent:** Wednesday, August 29, 2012 6:49 PM  
**To:** Ramana, Anand V.; Leonard Bennett  
**Cc:** Kristi Cahoon Kelly; Susan Rotkis; Pumphrey, Brian E.; Fratkin, Bryan A.; Vicki Ward  
**Subject:** RE: Rocabruna v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION

Anand,

The deadline for our objections is Friday, and I believe we are still waiting on a response to the points below. Can you please confirm that you are going to withdraw Interrogatory #28 in its entirety?

Thank you,

Andrew J. Guzzo, Esq.  
Surovell Isaacs Petersen & Levy PLC  
4010 University Drive, Second Floor

9/5/2012

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Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential information intended only for the addressee. If you have received this communication in error, please call me at 703-251-5400 or e-mail me immediately, and destroy all copies of the communications. Thank you.

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**From:** Ramana, Anand V. [mailto:ARamana@mcguirewoods.com]  
**Sent:** Thursday, August 16, 2012 2:17 PM  
**To:** Leonard Bennett  
**Cc:** Kristi Cahoon Kelly; Andrew Guzzo; Susan Rotkis; Pumphrey, Brian E.; Fratkin, Bryan A.; Vicki Ward  
**Subject:** RE: Rocabrana v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION

Len,

Enclosed please find the stipulated protective order we drafted. It is in all respects identical to the one you agreed to in Orebaugh except that I changed the caption and pluralized Plaintiffs and singularized Defendant. Please let me know by tomorrow at noon if this is acceptable to you, and, if so, we will file it with the court.

Regarding your other comments, we will get back to you shortly on each of your proposals.

Please note that if you need to notice a motion for a hearing, my next available motions date is August 31. I am in Fairfax on August 24. I will, however, keep that date open for you.

Regards,

Anand V. Ramana  
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**From:** Leonard Bennett [mailto:[lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)]  
**Sent:** Thursday, August 16, 2012 10:26 AM  
**To:** Ramana, Anand V.  
**Cc:** Kristi Cahoon Kelly; Andrew Guzzo; Susan Rotkis; Pumphrey, Brian E.; Fratkin, Bryan A.; Len Bennett; Vicki Ward  
**Subject:** Re: Rocabrana v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION

Counsel -

Sorry. I do not check cox.net.

Please change your direct correspondence address to [lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)

9/5/2012

1. I expected that the operators were in India. That is not news. What will be news is your refusal to produce them. We have recently won this issue in Alexandria and as to Chilean operators in Idaho as to Experian. Further, we won the issue some time back against MBNA (which became FIA, your client's sister credit card servicing company) in Griffin with Judge Williams.

Your dilemma is this: a. you produce or b. you agree that you cannot produce any evidence as to what BOA did or does in response to disputes.

In the mean time, please provide the names, employer (ie - are they employed by BoA) and addresses of the operators. We will prepare a motion to force the deps, and in the alternative to allow discovery to remain open in that one regard while we get them set up in India. It will not be the first time we have deposed an Indian vendor.

2. [REDACTED]

3. I am unsure what you are offering. We will not provide you any preview of what i will argue at trial. you are entitled to evidence we will use, and nothing more. If for example I ask a jury for 300k in actuals, the first time you will learn that will be during my closing. You are however entitled to liquidated damages. Are you agreeing to narrow your Ints to only request liquidated damages (such as interest mark ups, time and wages lost, etc.)?

4. We do not agree to anything as you suggest. Withdraw the Int or we file a motion for a PO. Your request is entirely improper. If and when we prevail at trial, and your appeal(s), we will brief fees. There is a process to exchange our time at that stage. Please confirm that you have unconditionally withdrawn your Int. For settlement planning - our post trial fees totals have consistently topped \$250k.

5. We agree to entry of the same PO. Though I am puzzled as to what documents BoA could possibly in good faith designate as confidential in this case. We are not seeking any trade secrets. Your client's procedures are certainly not confidential. And the Federal and Local rules already protect my clients regarding the filing of personal identifiers.

On Aug 16, 2012, at 8:57 AM, Ramana, Anand V. wrote:

Len,

I did not hear back from you yesterday. Do you want to have a call to discuss these items, including the protective order, today sometime? I can work with your schedule.

Regards,

Anand V. Ramana  
McGuireWoods LLP  
2001 K Street, NW  
Washington, DC 20006

9/5/2012

202.857.1734 (Direct Line)  
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**From:** Ramana, Anand V.  
**Sent:** Wednesday, August 15, 2012 3:25 PM  
**To:** 'Leonard Bennett'  
**Cc:** Kristi Cahoon Kelly; Andrew Guzzo; Susan Rotkis; Pumphrey, Brian E.  
**Subject:** RE: Rocabruna v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION

Len,

Thank you for raising your issues in short order. I will address each of your items from both of yesterday's emails in turn.

(1) Our understanding is that most of Bank's ACDV operators are in India. If we confirm that none of the operators who dealt with your clients' file are located in the United States, they will not be available for depositions in this country. We would be willing to put up a Rule 30(b)(6) witness and do our best to have that deposition occur on the dates you specified. Please let us know if you would like to go this route and send us your list of deposition topics for our review. Once we have that, we can secure a date that works for your proposed timeframe. Of course, if you have the names of any specific individuals you would like to depose, let us know. Similarly, we would like to depose both of your clients in the last week of September or first week of October. Please send us some available dates for each of them.

(2) [REDACTED]

[REDACTED]

(3) We are not convinced that any of the cases you cite stand for the proposition that there is an exception to the basic discovery requirement that a party must provide requested information (as opposed to information required to be disclosed pursuant to Rule 26(a)(1)) that is relevant to a claim for money damages. If you have such authority, please provide it. Nevertheless, we are willing to amend our interrogatories (8, 26) to only seek the amounts you seek for economic injuries as you suggest. If you plan on suggesting a number for non-economic injuries at trial, however, please let us know, as we would need to be informed of that amount during the discovery period. Please let us know if this works for you and we will amend accordingly.

(4) We will withdraw Interrogatory 28 at this juncture if you agree to a bifurcation of attorneys' fees, including not mentioning attorneys' fees at trial, and to cooperate in any post-judgment discovery in the event your clients prevail and BOA needs to assess the basis for your fee request.

(5) You did not respond to our suggestion that we enter a protective order similar to the one we agreed to in Orebaugh. Will that work for you? If no, we will need court intervention on that issue as well.

I can be available for a meet and confer at 4pm if you believe it is still necessary.

Thanks,  
Anand

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9/5/2012

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**From:** Leonard Bennett [<mailto:lenbennett@cox.net>]

**Sent:** Tuesday, August 14, 2012 8:58 PM

**To:** Ramana, Anand V.

**Cc:** Kristi Cahoon Kelly; Andrew Guzzo; Susan Rotkis; Pumphrey, Brian E.

**Subject:** Re: Rocabrana v. Bank of America: SUBJECT TO SETTLEMENT PRIVILEGE PROTECTION

Counsel:

We will need to meet and confer tomorrow afternoon with one of you regarding your discovery requests. We will move for a Protective Order failing your amendment to these Interrogatories as below.

Ints 8 and 26 ask that we liquidate our client's damages. We are of course not required to do so. We have provided you a list of previous comparable cases in which juries have determined the value of such unliquidated components as frustration, anger, embarrassment, fear of applying for credit, emotional distress, etc. Under the Fed Consumer Credit Protection Act generally and the FCRA specifically these are all recoverable. Similarly, we have provided you a list of previous punitive damage verdicts. You will not receive anything more in these categories. To the extent our clients assert hard liquidated economic injury (e.g. higher rate of interest incurred or faced), we certainly will provide that information. Please confirm that you are withdrawing any demand that we liquidate our client's unliquidated non-economic damages.

Int 28 asks for attys fees information. You don't get that until - after trial - we file our Rule 54 motion. Plenty of EDVA law, including Alexandria. I assume you knew that. Please confirm that you have withdrawn this Interrogatory in its entirety. We do not intend to wait our 15+3 days to object as we will not be providing you a privilege log that details our time slips, etc. until and unless the Court orders otherwise. And it won't.

Len Bennett

On Aug 14, 2012, at 3:25 PM, Ramana, Anand V. wrote:

Counsel,

Please see the enclosed correspondence and written discovery requests. It may make sense for us to have a short call regarding settlement this week. If you agree, please let us know and I'll schedule a call.

Thanks,

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9/5/2012

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